IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

MFA.No. 398 of 2003()

OPMV.304/1999 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM
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APPELLANT: PETITIONERS:
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1. IBRAHIM M., AGED 33 YEARS,
S/O. HAMZA, RESIDING AT MELATHIL HOUSE,
CHOORIYODE, THACHAMPURA. P.O.,
MANNARGHAT TALUK, PALAKKAD DISTRICT.

2. RAMLA, AGED 29 YEARS, W/O. IBRAHIM,
RESIDING AT MELATHIL HOUSE, CHOORIYODE,
THACHAMPURA P.O., MANNARGHAT TALUK,
PALAKKAD DISTRICT.

3. SALIH (MINOR) AGED 12 YEARS,
S/O. IBRAHIM, RESIDING AT MELATHIL HOUSE,
CHOORIYODE, THACHAMPERA P.O.,
MANNARGHAT TALUK, PALAKKAD DISTRICT.

4. FARSANA (MINOR) AGED 6 AND HALF YEARS,
D/O. IBRAHIM. (THE APPELLANTS 3 AND 4
ARE MINOR'S REPRESENTED BY GUARDIAN FATHER
AND NEXT FRIEND).

BY ADV. SRI.S.SANTHOSH

RESPONDENTS: RESPONDENTS:
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1. SUNILKUMR, AGED 26 YEARS,
S/O. CHAMMI, PANNICODE VEEDU,
KONGAD P.O., PALAKKAD DISTRICT.

2. BASHEER, AGE NOT KNOWN, S/O. IBRAHIM,PAR
AKKAL HOUSE, PARASSERY, KONGAD,
PALAKKAD DISTRICT.

3. THE NEW INDIA ASSURANCE CO.LTD.,
THANICKAL BUILDING, MAIN ROAD,
OTTAPALAM.

BY ADV. SRI.PMM.NAJEEB KHAN FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.
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M.F.A.No.398 of 2003
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Dated this the 23rd day of March, 2007.

JUDGMENT

Raman,J.

This is an appeal against the award passed by the Motor Accidents Claims Tribunal, Ottappalam in O.P.(MV) No.304 of 1999 and seeking further enhancement of the amount towards compensation. A seven year old boy was run over by an autorikshaw bearing registration No.KL9C/6256. The parents of the deceased and other family members as dependents filed the above claim seeking compensation alleging that the accident occurred as a result of the negligence on the part of the driver of the autorikshaw, which is insured with the third respondent – The New India Assurance Co. Ltd. The Tribunal found that the accident occurred as a result of the negligence of the driver of the autorikshaw. It then went on to quantify the compensation payable. After referring to **Lata Wadhwa Case** - 2001 A.C.J. 1735 and taking it as a guiding factor, an amount of Rs.70,000/- was awarded towards dependency and a further sum of Rs.14,500/- was awarded towards pain and suffering, loss of estate,

funeral expenses and loss of love and affection. Thus, a total amount of Rs.84,500/- was awarded. The owner of the vehicle was held vicariously liable for the negligence of the driver and directed the Insurance Company to deposit the amount, as they are liable to indemnify the insured. The Tribunal also awarded the total amount in proportion to the parties and the manner in which the awarded amount is to be released.

2. In **New India Assurance Co. Ltd.** v. **Satender** – 2006(4) K.L.T. 974, the Supreme Court had occasion to consider a similar case where also the deceased was a minor aged 9 years. It was held that in cases of young children of tender age, in view of uncertainties abound, neither their income at the time of death nor the prospects of the future increase in their income nor chances of advancement of their career are capable of proper determination on estimated basis. Therefore, neither the income of the deceased child is capable of assessment on estimated basis nor the financial loss suffered by the parents is capable of mathematical computation. In that case, an amount of Rs.2,40,000/- was awarded for the financial loss and a sum of Rs.1,00,000/- awarded for emotional loss and a further amount of Rs.5,000/- for funeral expenses. Thus, a total amount of Rs.4,45,000/- was awarded as compensation with 9% interest per

annum. It was held that the Motor Accidents Claims Tribunal should not have held that the notional income is to be taken at Rs.30,000/- per annum and the multiplier adopted is also on the higher side. After referring to the decision in **Mallett** v. **Mc.Monagle** – 1970 (AC) 166 and also the decision of the Apex Court in **State of Haryana and Anr.** v. **Jasbir Kaur and Ors** – (2003) 7 S.C.C. 484 and other relevant decisions on the point, the Apex Court held that applying the principles indicated in **Jasbir Kaur's Case**, it will be fair and proper to award Rs.1,80,000/- by way of compensation with 7.5% interest per annum from the date of petition till date of payment.

3. In this case, the average age of the parents will be 30 and a notional income of Rs.15,000/- could be taken though as per the Second Schedule, 17 would be the multiplier to be adopted. As held by the Apex Court in situation like this, the multiplier of 17 would be on a higher side. Taking into account the totality of the facts and circumstances of the case, we think, it is just and proper to award an amount of Rs.1,10,000/- towards dependent benefits. An amount of Rs.14,500/- has already awarded by the Tribunal towards pain and suffering and other conventional head is however not disturbed. Thus, instead of a total amount of Rs.84,500/- as awarded by the Tribunal, the claimants will be entitled to an amount of Rs.1,24,500/-. Thus,

the claimants will be entitled to an additional compensation of Rs.40,000/-, which will carry interest at 7% per annum from the date of petition till realisation. The said amount will also be apportioned in the same manner as awarded. The balance amount to be deposited by the Insurance Company, will be deposited within two months from the date of receipt of a copy of this judgment.

Appeal is disposed of as above.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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